

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-456

MATTHEW COSTLEY,
APPELLANT

V.

ARKANSAS DEP'T OF HUMAN
SERVICES and MINOR CHILDREN,
APPELLEES

Opinion Delivered 10 DECEMBER 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. JJN2006-2218]

THE HONORABLE WILEY A.
BRANTON JR., JUDGE

MOTION TO WITHDRAW DENIED;
REBRIEFING ORDERED

D.P. MARSHALL JR., Judge

The circuit court terminated Matthew Costley's parental rights in his four children, J.C., C.C., V.C., and R.C. On appeal, his lawyer has moved to withdraw and filed a no-merit brief pursuant to *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004) and our Rule 4-3(j)(1). Costley is currently imprisoned in the Arkansas Department of Correction. Though our Clerk sent him counsel's no-merit brief, Costley filed no pro se points for reversal under Rule 4-3(j)(2). After reviewing the record, we are satisfied that there were three adverse rulings made at the termination hearing. Counsel's brief contends that each ruling provides no meritorious ground for reversal. When evaluating a no-merit brief, we must decide whether the appeal is wholly frivolous or presents any issues of arguable

merit. *Linker-Flores*, 359 Ark. at 141, 194 S.W.3d at 747–48.

Costley has been in and out of jail and living in many different homes during the last decade. And it appears that he could not be located when the government attempted to summon him for the initial probable-cause hearing. The Rules authorize a person at least fourteen years old who lives in a defendant's dwelling house or usual place of abode to accept a copy of the summons in the defendant's absence. Ark. R. Civ. P. 4(d)(1). The Department left the copy of the summons and original dependency-neglect petition with Costley's grandmother at her home in Little Rock.

Costley did not appear at the probable-cause hearing, the adjudication hearing, or the permanency-planning hearing. He first appeared in court for the termination hearing, though he did not have a lawyer. It is unclear whether Costley objected to improper service at that point. The court terminated the parental rights of the children's mother at that hearing. But the judge continued the termination issue as to Costley for one month so that he could obtain a lawyer. Costley was represented by counsel at the next hearing, which was again continued. At the final hearing, Costley responded to questions from the court. He said that he did not receive the summons and original petition until a year after service because he was not living with his grandmother when the case began. Costley's lawyer noted this testimony about service during his closing argument, but did not focus on the issue. The court then terminated his parental rights.

The service issue is not wholly frivolous. There are unanswered questions: Was Costley properly served? If not, did he waive any defect in service? We therefore order rebriefing. In addition to addressing the service issue, counsel should also address how any ruling in Costley's favor on service would affect the other two adverse rulings discussed in the brief. We deny Costley's lawyer's motion to withdraw and order rebriefing on the merits.

HART and VAUGHT, JJ., agree.